

Resolution Agreement
Jersey College School of Nursing
OCR Docket Number #04-13-2547

The U.S. Department of Education, Office for Civil Rights (OCR), initiated an investigation of the above-referenced complaint filed against the Jersey College School of Nursing (College), pursuant to Section 504 of the Rehabilitation Act of 1973 (Section 504), as amended, 29 U.S.C. Section 794, and its implementing regulation at 34 C.F.R. Part 104, which prohibit discrimination on the basis of disability by recipients of Federal financial assistance (FFA), and Title IX of the Education Amendments of 1972 (Title IX) and the Department's implementing regulations at 34 C.F.R. Part 106, which prohibit sex discrimination in education programs and activities operated by educational institutions that receive FFA. As a recipient of FFA from the Department, the College is subject to the provisions of Section 504 and Title IX.

The College agrees to take all steps reasonably designed to ensure that students enrolled in the College are not subject to a hostile environment, on the basis of disability and sex, and to respond equitably to allegations of disability and sexual harassment. To this end, the College will promptly investigate all incidents and complaints of disability and sexual harassment of students the College knows of or reasonably should be known to the College, and the College will take appropriate action to respond to complaints, which may include disciplinary action against students and/or staff found to have violated its anti-harassment policies and procedures. Harassing conduct may take many forms, including verbal acts and name calling; graphic and written statements, which may include use of cell phones or the Internet; or other conduct that may be physically threatening, harmful or humiliating. The College will take prompt, effective, and responsive action reasonably designed to end the hostile environment, if one has been created, prevent its recurrence, and, where appropriate, take steps to remedy the effects of the hostile environment on the affected student(s). This resolution has been entered into voluntarily between the parties and does not constitute a finding or admission that the College is not in compliance with Section 504 or Title IX and/or its implementing regulations. Accordingly, the College agrees to the following:

Anti-Harassment Statement, Notice of Nondiscrimination, and Sexual Harassment and Disability Harassment Policies & Procedures

1. By **October 2, 2014**, the College will issue an Anti-Harassment statement (Statement), approved by OCR, to all students, staff, and administrators that will be printed in the College's Academic Catalog, posted in prominent locations at the College, and published on the College's website stating that the College does not tolerate harassment. The Statement will encourage any student, staff, or third party who believes he or she has been subjected to harassment (sexual, disability, or other) to notify the College and will describe the College's commitment to conduct a prompt investigation. The Statement will include the appropriate contact information for the designated staff member to whom individuals may report allegations of harassment. The Statement will warn that students found to have engaged in prohibited harassment will be promptly disciplined and make clear that such discipline could include suspension or expulsion, as appropriate. The Statement will make clear that College staff found to have engaged in prohibited harassment will be promptly disciplined and make clear that such discipline could include termination of employment, as appropriate. The

Statement will encourage students, staff and administrators to work together to prevent sexual harassment and disability harassment.

REPORTING REQUIREMENT: By **October 16 2014**, the College will submit a copy of the Statement to OCR for its review and approval, prior to issuance.

Within 30 days of receiving OCR's approval, the College will issue and publish the Statement and provide OCR with copies of the written or electronic documents containing the Statement, the date issued, and a statement of the locations of such postings.

2. By **October 2, 2014**, the College will draft a combined Notice of Nondiscrimination¹ that prohibits discrimination based on race, color, national origin, sex, disability, and age, and identifies by name/title, address, and telephone number, the employee(s) designated to oversee compliance with Title VI, Title IX, Section 504 and the Age Discrimination Act (Age Act). Additionally, the Notice of Nondiscrimination must state, where appropriate, that the College does not discriminate in admission, treatment, or access to its programs or activities. The Notice of Nondiscrimination must state that the College does not discriminate in employment in its programs or activities. The Notice of Nondiscrimination must also include the name or title, position, address, and phone number of the person or persons designated to coordinate compliance efforts under Title IX, Section 504, and the Age Act.²

REPORTING REQUIREMENT: By **October 16, 2014**, the College will provide OCR with a copy of its Notice of Nondiscrimination consistent with this Item, for OCR's review, comment and approval.

Within 30 days of receiving OCR's approval, the College will issue and publish the Notice of Nondiscrimination and provide OCR with copies of the written or electronic documents containing the Statement, the date issued, and a statement of the locations of such postings.

3. By **November 3, 2014**, the College will revise, and submit to OCR for review and approval, all policies applicable to sexual harassment and disability harassment complaints and investigations (hereinafter Policies),³ including those contained in the Academic Catalog and Faculty Handbook, to provide correct definitions of sexual harassment/violence and disability harassment (with examples of both) and make clear that sexual harassment, which is a form of sex discrimination, is a violation of Title IX of the Education Amendments of 1972, while disability harassment is a violation of Section 504 of the Rehabilitation Act of 1973.

¹ For guidance regarding drafting a statement of nondiscrimination, see OCR's website at <http://www2.ed.gov/about/offices/list/ocr/docs/nondisc.html>

² The person designated should be someone other than the College's President in order to avoid conflicts of interest.

³ OCR's Revised Sexual Harassment Guidance, January 19, 2001, <http://www2.ed.gov/about/offices/list/ocr/docs/shguide.html>; Dear Colleague Letter, October 26, 2010, <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201010.html>; and Dear Colleague Letter, April 4, 2011, <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201104.html>

The revised Policies will allow for oral complaints as well as written; it will eliminate the requirement to only allow the harmed individual to file the complaint; it will include the meaning (or provide examples) of “the protected category or activity under which the complainant is filing the complaint; ” and eliminate the language which currently states, “If a claim is found to be unsupported and the investigator finds that the filing of the complaint was intentionally dishonest or made maliciously without regard for truth, the complainant will be subject to disciplinary action.”⁴

The amended Policies will incorporate the following elements that OCR considers necessary in order for the procedures to meet appropriate due process standards and be prompt and equitable, as required by the regulations:

- a) Notice to students and employees of the procedure, including where complaints may be filed;
- b) Application of the procedure to complaints alleging discrimination or harassment carried out by employees, other students, or third parties;
- c) Adequate, reliable, and impartial investigation of complaints, including the opportunity of all parties to present witnesses and other evidence.
- d) Designated and reasonably prompt timeframes for the major stages of the complaint process;
- e) Written notice to the parties of the outcome of the complaint;
- f) An assurance that the College will take steps to prevent recurrence of any discrimination and to correct the discriminatory effects on the complainant and others, if appropriate;
- g) Provision of interim measures to ensure the safety of the alleged victim during the investigation of a complaint. Such interim measures should not disproportionately affect the alleged victim;
- h) Application of the preponderance of the evidence standard to the investigation conducted;
- i) A prohibition of retaliation against persons who make complaints of sexual harassment or disability harassment;
- j) Notice to the Complainant of the right to proceed with a criminal investigation and a Title IX or Section 504 complaint simultaneously;
- k) Notice to the parties of the right to end an informal process and begin a formal process at any time;
- l) Not allow conflicts of interest (real or perceived) by those handling the procedures;
- m) Include range of potential remedies and sanctions;
- n) Address confidentiality for the complaint/victim;
- o) Disallow evidence of past relationships for Title IX allegations; and
- p) Provide equal opportunity to appeal for both parties.

These procedures shall make clear that the College is responsible for conducting an investigation of all complaints of sexual harassment or disability harassment independent of any investigation conducted by any criminal authority or other agency and that the College’s investigation will not be delayed by any investigation by a criminal authority unless expressly required by the criminal

⁴ This language can be interpreted as retaliation.

authority. The procedures will also make clear that upon notice that the criminal authority has completed its fact finding, the College will immediately resume its investigation under Title IX and/or Section 504.

REPORTING REQUIREMENT: By **November 17, 2014**, the District will submit a copy of the revised Policies to OCR for its review and approval.

Publication of Revised Policies

4. **Within 30 days after receiving OCR's approval** of the Policies, the College will publish the OCR approved Policies in all written and online student handbooks or other relevant publications.

REPORTING REQUIREMENT: **Within 60 days of the date of OCR's approval**, the College will provide OCR with a copy of the publications and reference to online links which include the amended Policies.

Staff Training

5. By **January 15, 2015**, the College will implement annual training of all staff on the College's revised Policies and how to recognize and appropriately address possible sexual harassment and violence under Title IX and Section 504. In addition to the foregoing topics, the Title IX Coordinator, Section 504 Coordinator, and any staff involved in receiving or investigating complaints of sexual harassment or disability harassment will be provided annual training on the College's Title IX and Section 504 responsibilities to address allegations of sexual harassment or violence, disability harassment, and how to conduct Title IX and Section 504 investigations under the revised Policies.

REPORTING REQUIREMENT: By **February 13, 2015**, the College will provide documentation to OCR demonstrating that the College has initiated annual training pursuant to the Action Item above. The documentation shall include: (1) the date of the training session(s); (2) a list of names and titles of employees who participated in the training session(s); (3) a description of the presenter's background and qualifications with respect to Title IX, Section 504, and the College's policies and procedures; (4) a copy of the agenda and the training materials disseminated; and (5) certification that the materials were provided to any staff unable to attend the training due to an emergency or other excused absence.

System for Tracking and Review of Sexual Harassment Complaints

5. **By November 3, 2014**, the College will implement a procedure of monitoring and tracking formal and informal complaints of disability harassment and sexual harassment or violence against students. The monitoring system will track the following components:
 - a. The date of the complaint.
 - b. Summary of the complaint allegation.
 - c. Documentation related to the investigation: investigator notes, witness interviews, evidence submitted by the parties, investigative reports and

summaries, any final disposition letters to the parties including the date of the letters, disciplinary records, and documentation regarding any appeals.

REPORTING REQUIREMENT: By **November 17, 2014**, the College will provide OCR a copy of the form(s) it will use to track responses to complaints alleging sexual harassment/violence and disability harassment used in the system of monitoring and tracking formal and informal complaints described in Item #6.

6. By **May 29, 2015**, the College will compile a report of all complaints of disability harassment and sexual harassment/violence received by the College during the 2014-2015 school year, including a notation of the campus where the incident occurred, the College's investigation with findings and actions taken in accordance with Item #6 above.

REPORTING REQUIREMENT: By **June 30, 2015**, the College will provide OCR a copy of the compiled report.

Preadmission Inquiries

7. By **October 2, 2014**, the College will, in accordance with the requirements of Sections 504, review and revise its policies and procedures relating to the admission of students. As required by the Section 504 implementing regulation at 34 C.F.R. § 104.42 (b)(4), the College will discontinue all oral or written pre-admission inquiries into an applicant's disability or general health status (i.e., physician's affirmation of applicant's medical status), unless it is doing so pursuant to the exception at 34 C.F.R. § 104.42(c).

REPORTING REQUIREMENT: By **November 17, 2014**, the College will submit to OCR a copy of its revised admission policies and procedures for review and approval to ensure that they are consistent with the requirements of Section 504.

8. By **January 15, 2015**, the College will initiate annual training of all admissions staff on the Section 504 requirements that all prospective students, regardless of disability, must be treated in a nondiscriminatory manner in the application, admission and enrollment process and on the Section 504 prohibitions concerning inquiries into whether an applicant is a person with a disability or has a health condition.

REPORTING REQUIREMENT: By **February 13, 2015**, the College will provide documentation of the training provided to its admissions staff, including: (a) the date(s) of the training; (b) list of attendee; (c) the name, title and credentials of the trainer; and (d) a copy of the training materials.

The College understands that by signing this Agreement, it agrees to provide data and other information in a timely manner in accordance with the reporting requirements of this agreement. Further, the College understands that during the monitoring of this Agreement, if necessary, OCR may visit the College's, interview staff and students, and request such additional reports or data as are necessary for OCR to determine whether the College has fulfilled the terms of this Agreement and is in compliance with the Title IX implementing regulation at 34 C.F.R. §106, and the Section 504 implementing regulation at 34 C.F.R §104.

The College understands that OCR will not close the monitoring of this Agreement until OCR determines that the College has fulfilled the terms of this Agreement and is in compliance with the Title IX implementing regulation at 34 C.F.R. §106 and the Section 504 implementing regulation at 34 C.F.R §104.

The College understands and acknowledges that OCR may initiate administrative enforcement or judicial proceedings to enforce the specific terms and obligations of this Agreement. Before initiating administrative enforcement (34 C.F.R. §104.61 and 34 C.F. R. § 106.71, both incorporating 34 C.F.R. §§ 100.9, 100.10 by reference), or judicial proceedings to enforce this Agreement, OCR shall give the District written notice of the alleged breach and a minimum of sixty (60) calendar days to cure the alleged breach.

This Resolution Agreement will become effective immediately upon the signature of the President or his/her designee below.

President or Designee

Date